

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL ALLEN YOCOM,
Plaintiff,
v.
KATHLEEN ALLISON, et al.,
Defendants.

No. 2:21-cv-0311 DB P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff's complaint will be screened pursuant to 28 U.S.C. § 1915A(a) in due course. In the meantime, plaintiff's motion requesting an emergency hearing is before the court. (ECF No. 6.)¹

I. Motion for Emergency Hearing and Special Response

Plaintiff's motion, filed on February 26, 2021, states he is in a life and death emergency and that the defendants are denying him emergency health care and not answering his request forms and inmate appeals. He states he needs to go to the hospital but is not being taken to the hospital. Plaintiff requests the court to hold an emergency hearing.

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¹ This motion was filed in this case and in case number 2:20-cv-2467-KJM-AC. The undersigned does not address the portions of the motion specifically directed to case 2:20-cv-2467-KJM-AC.

1 By order signed on April 8, 2021, the court ordered a Supervising Deputy Attorney
 2 General to address the allegations in plaintiff's motion for an emergency hearing. Pursuant to the
 3 court's order, and by special appearance on April 21, 2021, a Supervising Deputy Attorney
 4 General responded to plaintiff's allegations. (ECF No. 19.) The response filed includes a
 5 declaration signed by plaintiff's primary care physician, Dr. Son.

6 According to Dr. Son, plaintiff has within the last year received multiple physical
 7 examinations from Dr. Son and other medical professionals, as well as blood tests and x-rays. Dr.
 8 Son states plaintiff's laboratory tests in January 2021 were essentially normal and not indicative
 9 of any terminal illness, or kidney or liver disease. He received a gastrointestinal consult in
 10 September 2020, and a colonoscopy on October 10, 2020. He has complained of chest pain and
 11 has received a thorough cardiac work up, including an emergency visit on February 11, 2021,
 12 which was negative for a heart attack/myocardial infarction, irregular heart rhythm, and heart
 13 murmur. An electrocardiogram obtained on March 30, 2021 in response to complaints of chest
 14 pain indicated that plaintiff's heart had a normal rhythm. There was no indication that a
 15 myocardial infarction or heart attack had occurred. Dr. Son further states plaintiff had a fractured
 16 right arm which was surgically repaired. At a follow-up appointment on April 5, 2021, the
 17 orthopedic surgeon indicated no additional surgery was needed. (ECF No. 19 at 7-8.)

18 **II. Legal Standards for Injunctive Relief**

19 The legal principles applicable to a request for injunctive relief are well established. To
 20 prevail, the moving party must show either a likelihood of success on the merits and the
 21 possibility of irreparable injury, or that serious questions are raised and the balance of hardships
 22 tips sharply in the movant's favor. See Coalition for Economic Equity v. Wilson, 122 F.3d 692,
 23 700 (9th Cir. 1997); Oakland Tribune, Inc. v. Chronicle Publ'g Co., 762 F.2d 1374, 1376 (9th
 24 Cir. 1985). The two formulations represent two points on a sliding scale with the focal point
 25 being the degree of irreparable injury shown. Oakland Tribune, 762 F.2d at 1376.

26 "Under any formulation of the test, plaintiff must demonstrate that there exists a
 27 significant threat of irreparable injury." Id. In the absence of a significant showing of possible
 28 irreparable harm, the court need not reach the issue of likelihood of success on the merits. Id. In

1 cases brought by prisoners involving conditions of confinement, any preliminary injunction “must
2 be narrowly drawn, extend no further than necessary to correct the harm the court finds requires
3 preliminary relief, and be the least intrusive means necessary to correct the harm.” 18 U.S.C. §
4 3626(a)(2).

5 **III. Discussion**

6 Although plaintiff states he is in a life and death emergency and needs to go to the hospital,
7 his allegations are conclusory and fail to raise his right to relief above a speculative level. Moreover,
8 plaintiff’s treating physician does not agree with plaintiff’s assessment. The court finds plaintiff is
9 receiving health care and retains the ability to submit health care grievances.

10 Under the circumstances, plaintiff fails to show he is under a presently existing actual threat.
11 See Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 130-31 (1969); FDIC v. Garner,
12 125 F.3d 1272, 1279-80 (9th Cir. 1997), cert. denied, 523 U.S. 1020 (1998); Caribbean Marine
13 Servs. Co., 844 F.2d at 674. A speculative injury does not constitute irreparable harm sufficient for
14 a preliminary injunction to issue. See Caribbean Marine Servs. Co. v. Baldrige, 844 F.2d 668, 674
15 (9th Cir. 1988); Goldie’s Bookstore, Inc. v. Superior Court, 739 F.2d 466, 472 (9th Cir. 1984).

16 Because plaintiff fails to show he is under a presently existing threat, he fails to show a
17 likelihood of success on the merits and possibility of irreparable injury, or that the balance of
18 hardships tips sharply in his favor. Under these circumstances, the undersigned will recommend
19 the motion for an emergency hearing be denied.

20 **IV. Conclusion**

21 IT IS HEREBY ORDERED that the Clerk of Court shall assign a district judge to this
22 action.

23 In addition, IT IS RECOMMENDED that plaintiff’s motion for an emergency hearing
24 (ECF No. 6) be DENIED.

25 These findings and recommendations are submitted to the United States District Judge
26 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
27 days after being served with these findings and recommendations, plaintiff may file written
28 objections with the court and serve a copy on all parties. Such a document should be captioned

1 “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that
2 failure to file objections within the specified time may waive the right to appeal the District
3 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 Dated: September 2, 2021

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DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE